

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:)	CHAPTER 13
)	
CHERYL HOLIDAY,)	CASE NO. 13-76998-MHM
)	
Debtor.)	

)	
CHERYL HOLIDAY,)	
)	
)	
Movant,)	
v.)	CONTESTED MATTER
)	
BANK OF AMERICA HOME LOANS,)	
)	
Respondent.)	

ORDER AND NOTICE REGARDING STRIP LIEN MOTION

On January 2, 2014, Debtor filed a motion to strip the junior lien held by Bank of America Home Loans (Doc. No. 16) (the "Motion"). In the Motion, Debtor alleges:

- Debtor's real property and residence is 6420 Wedgewood Trace, Tucker, GA 30084 (the "Property").
- The fair market value of the Property is \$53,568.00, based upon an online estimate performed by Zillow (www.zillow.com), whose report is attached to the Motion.
- Select Portfolio Servicing, ("First Lender") holds a first priority lien in the amount of \$98,064.00. First Lender has yet to file a proof of claim.
- Bank of America Home Loans ("Junior Lender") holds a second priority lien in

the amount of \$19,071.00, and has yet to file a proof of claim.

- Junior Lender's lien is wholly unsecured.

The Motion is available for review in the office of the Clerk, U.S. Bankruptcy Court between 8:00 a.m. and 4:00 p.m. or online anytime at <http://ecf.ganb.uscourts.gov> (registered users) or at <http://pacer.psc.uscourts.gov> (unregistered users). It is hereby

ORDERED that any person or party who objects to entry of **the order attached as Exhibit "A,"** granting the relief sought in the Motion:

Must file a written objection, stating the grounds therefore, on or before the close of business¹ _____, 2014, with

Clerk, U. S. Bankruptcy Court
1340 U. S. Courthouse
75 Spring Street, S.W.
Atlanta, Georgia 30303-3367;

Must serve a copy of said objection upon Debtor's attorney:

RICKMAN & ASSOCIATES, P.C.
Dan Saeger
1325 Satellite Blvd., Ste., 1406
Suwanee, GA 30024

so that such written objections are actually received by Debtor's attorney on or before the deadline set forth in Paragraph 1; and **Must advocate** the objection at the hearing on the Motion.

If an objection is filed, hearing on the Motion will be held before the undersigned in Courtroom 1204, United States Courthouse, 75 Spring Street, S.W., Atlanta, Georgia 30303, on _____, 2014, at _____ o'clock ____m.

¹ Objections filed electronically may be filed up to 11:59:59 p.m. All other objections must be filed by delivery to the Clerk's Office at or before 4:00 p.m.

Any objection not timely filed, served, and advocated at the hearing set above shall be deemed waived, and the proposed order attached to this order as Exhibit “A” may be entered without further notice or hearing. It is further

ORDERED that, on or before _____, 2014, Debtor’s attorney shall serve a copy of this Order and Notice upon Debtor, the First Lender, the Junior Lender, and the Chapter 13 Trustee, and shall file a certificate of such service within three days thereafter.

IT IS SO ORDERED, this the _____ day of _____, 2014.

MARGARET H. MURPHY
UNITED STATES BANKRUPTCY JUDGE

Prepared by:
Dan Saeger
State Bar No. 680628
RICKMAN & ASSOCIATES, PC
1325 Satellite Blvd, Suite 1406
Suwanee, Georgia 30060
(P) 678-500-9546
(F) 678-391-4422
bk@thegeorgialawfirm.com

Attorney for Debtor

Exhibit A

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:)	CHAPTER 13
)	
CHERYL HOLIDAY,)	CASE NO. 13-76998-MHM
)	
Debtor.)	

)	
CHERYL HOLIDAY,)	
)	
)	
Movant,)	
v.)	CONTESTED MATTER
)	
BANK OF AMERICA HOME LOANS,)	
)	
Respondent.)	

**PROPOSED
ORDER ALLOWING JUNIOR LIEN AS UNSECURED CLAIM**

On [January 2, 2014], Debtor filed a ***MOTION TO DETERMINE SECURED STATUS OF JUNIOR SECURITY INTEREST AND/OR LIEN PURSUANT TO 11 U.S.C. § 506***, seeking to strip the lien held by Bank of America Home Loans (“Bank of America Home Loans” or “Junior Lender”) (Doc. No. 16) (“Motion”). An Order and Notice regarding the Motion was entered January 2, 2014 (Doc. No. ____) (“Notice”). Debtor contends that Bank of America Home

Loan's claim is completely unsecured because no value exists in the residential real property of Debtor located at 6420 Wedgewood Trace, Tucker, GA 30084, (the "Property") to which its junior lien can attach. Therefore, Bank of America Home Loan's claim is unsecured and its lien may be deemed *void* upon entry of Debtor's discharge or completion of Debtor's plan pursuant to 11 U.S.C. Sections 506(d) and 1322(b)(2). See *In Re Tanner*, 217 F. 3d 1357 (11th Cir. 2000), *In Re Tran*, 431 B.R. 230, 235 (Bankr. N.D. Cal. 2010); *In Re Felicien*, Case No. 11-50587-MHM (Doc. No. 46) (Bankr. N.D. Ga., October 11, 2011); *In Re Jennings*, 454 B.R. 252 (Bankr. N.D. Ga. 2011) (J. Mullins). Debtor and the record show that the holder of the first priority lien, Select Portfolio Servicing, claims a secured debt in the amount of \$98,064.00, which amount exceeds the value of the Property, \$53,568.00. Therefore, it is appropriate to value the lien of Bank of America Home Loans at zero for purposes of confirmation of Debtor's Chapter 13 plan and to classify and treat its claim as a general unsecured claim. Bank of America Home Loans failed to oppose the Motion in writing, so that, pursuant to the Notice, its lack of opposition and for good cause shown, it is hereby

ORDERED that the claim of Bank of America Home Loans is *disallowed* as secured, *allowed* as unsecured, and shall be treated accordingly under Debtor's Plan. Upon completion of Debtor's Chapter 13 plan, Debtor may seek by motion in this case an order avoiding the Bank of America Home Loans lien. It is further

ORDERED that, should this chapter 13 case be dismissed, the lien of Bank of America Home Loans shall not be affected by this Order.

[END OF DOCUMENT]

Prepared by:
Dan Saeger
State Bar No. 680628
RICKMAN & ASSOCIATES, PC
1325 Satellite Blvd, Suite 1406
Suwanee, Georgia 30060
(P) 678-500-9546
(F) 678-391-4422
bk@thegeorgialawfirm.com

Attorney for Debtor

DISTRIBUTION LIST